

## REMARKS

### A. Overview

The pending claims are 1-23, 25-28. Claim 24, related to the idea of creating "state" in a "stateless environment", is under a restriction requirement and has been withdrawn by the Examiner, the Examiner finding it relates to an independent and distinct invention. Applicant has reserved the right to pursue that claim in a related application.

The sole rejection of Applicants' claims is obviousness under 35 U.S.C. §103. Walker U.S. Patent 5,794,207 ("Walker") is the primary reference. The Commodities Trading Manual ("Manuel") is cited with Walker, but as a secondary reference. The Microsoft Press Computer Dictionary, 3<sup>rd</sup> Ed. ("Dictionary") is cited as additional secondary reference against claims 3 and 19. Peterson U.S. Patent 5,113,643 ("Peterson") is cited as an additional secondary reference against claim 21.

Applicant respectfully traverses these rejections of the claims.

### B. First Grounds of Traversal

Applicants respectfully submit a *prima facie* showing of obviousness has not be established because the primary reference, Walker, is not prior art to Applicants' claims. If Walker is removed as prior art, the obviousness rejections fail. Applicants have previously supplied evidence and arguments in support of this position, and hereby resubmits herein the prior arguments and evidence by incorporation by reference.

To predate a cited reference the record must establish (a) a conception by Applicants' prior to the effective date of the cited reference, (b) an actual or constructive reduction to

practice, and (c) diligence by Applicants' to move to reduction to practice from a day before the effective date of the reference until the reduction to practice. It is respectfully submitted that the Examiner has conceded points (a) and (b).<sup>1</sup> Therefore, the only issue remaining is point (c), namely, whether Applicants act diligently to reduce the invention to practice in the approximately ten-month period from September 1996 to July 1997.

Applicants have made multiple submissions of evidence under Rule 131. The Examiner's advisory action of June 4, 2003, stated:

"Due diligence is not proven by the latest declaration. The declaration has been carefully reviewed and shows much activity in pursuit of the business, but little of technical activity. Most entries refer to financing activity, presentations, proposal preparation and generalized discussion. Occasional entries mention technical aspects such as prototyping or HTML features, but these are not detailed or frequent. No evidence such as dated software print outs indicating continuous technical activity is presented. The evidence provided shows substantial effort in business aspects but not in development of the invention."

Applicants traverse these conclusions and respectfully request reconsideration.

First, Applicants submit that diligence through consistent technical activity has been proven. The Federal Circuit Court of Appeals has held diligence must be "reasonable". *Mahurkar v. C.R. Bard, Inc.* 79 F.3d 1572, 1577 (Fed. Cir. 1996). There is no fixed rule on what constitutes diligence. Under the case of *Hybritech Inc. v. Abbott Laboratories*, 4 USPQ2d 1000 (C.D. Cal. 1987), *aff'd* 849 F.2d 1446 (Fed. Cir. 1988), diligence must be considered in light of the all the circumstances during the relevant time period, including difficulties associated with the formation of a new business. As long as the inventor was engaging in activity that was reasonably necessary for the invention to be reduced to practice, that activity is diligent, even if

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<sup>1</sup> See Advisory Action of June 4, 2003, which continues final rejection and raises diligence as the only issue.

the inventor "did not actually work on the invention each day." *Hybritech, Inc.*, 4 USPQ2d at 1006.

Applicants respectfully point out that the evidence supplied shows the consistent, dedicated actions taken by the inventors to reduce the invention to practice. The declarations cover the entire period of time. Corroboration is given by documents. The main point is this – the focus, use of resources, activities of the inventors was exactly what the test for diligence requires, they were "engaging in activity that was reasonably necessary for the invention to be reduced to practice". They could not build a large, web-based application for facilitating ag production contracts without going through the normal stages of development of (a) taking the concept and researching what would be needed to implement it in the real world, (b), fleshing out the concepts, researching what hardware and software would be needed, (c) creating the infrastructure to build it (people that could program what was needed, equipment to create the code, etc.), and (d) testing it.

Applicants' submissions include details of how the four inventors moved the idea to an actual reduction to practice in about ten months. This is a short period, as opposed to long period, for creating a system a functioning web-based application such as claimed and described in the application. The following are a few examples of such activity in the evidence of record from early in the relevant period of time:

1. Initial assignments of technical responsibilities to reduce invention to practice  
(See Fifth Supplemental Declaration throughout, *e.g.* ¶12, 18).
2. Sought out potential programming tools and code. (*Id.* ¶22).
3. Investigated specific needs of a system. (*Id.* ¶26).
4. Dbase investigation and development. (*Id.* ¶27).

5. Prototype work. (*Id.*, ¶¶39, 41-44).
6. Security levels development for the system. (*Id.*, ¶40).
7. Portal investigation. Investigated specific needs of a system. (*Id.*, ¶50).

Additional specific technical activity continues throughout the remainder of the Fifth Supplemental Declaration. But a handful of additional examples can be seen at ¶¶ 55 (Microsoft), 57 (modules), 68 (functionalities), 69 (security platform), 85 (prototype help), 91 (software), 104 (Lotus), database work (132). Much of the latter portion of the declaration is consistently events regarding building the prototype that was launched the summer of 1997.

Each of these acts involves advancement of the concept of a global computer network system to an actual running system. There had to be, in parallel, people working on filling in the details of the general concept. People had to be working on outlining the programming. People were working on gathering participants for field trials. People were working on investigation of how the system would be implemented (e.g. through what programming, through what equipment, etc.) These are all set forth and corroborated in Applicants' evidence. These steps are all directed to making an actual working internet based system. They are, thus, all technical steps towards reducing the invention to practice. The system could not be built without these activities.

Secondly, the Federal Circuit Court of Appeals held in *Griffith v. Kanamaru*, 816 F.2d 624, 627 (Fed. Cir. 1987), that assessing whether an inventor has been diligent in reducing the invention to practice, the "everyday problems and limitations encountered by an inventor" may be considered. The evidence of record showed:

1. A handful of individuals with extremely limited resources were involved, not a large company with virtually unlimited resources. (*See* Fifth Supplemental Declaration, ¶¶7-11).
2. Initially, there was not even the benefit of an existing company, building, or even modest resources to support the inventors' activities. (*Id.*, ¶¶13-14).
3. Personal resources outside of full time jobs were used. (*Id.* ¶¶8-10).
4. Spare time was used initially. (*Id.*, ¶13).
5. Later, still on extremely limited budgets, people were hired and equipment was purchased to create the prototype. (*Id.*, ¶23 *et seq.*).

These activities, again, were directed towards reducing the invention to practice. The inventors could not do all the needed work. They had to hire persons with certain skills. The prototype could not be created without substantial equipment. Thus, the limitations of a few individuals with an idea for a large scale internet agricultural crop production contract internet application, necessitated the activities and time needed for the same.

But third, regardless of whether the evidence shows explicitly day-to-day "technical" activity, the Federal Circuit has held that difficulties associated with formation of a new business may be considered in evaluating diligence. *Hybritech, supra*, 4 USPQ2d at 1006. More recently the Federal Circuit has held that evidence of construction of a manufacturing plant to practice a chemical process is sufficient to show diligence even though preparations for manufacturing are not themselves actual reduction to practice of the chemical process itself, *Scott v. Koyama*, 61 USPQ2d 1856 (Fed. Cir. 2002), further holding that there is no rule that only practice of the chemical process itself is evidence of diligence. Here, the evidence of record shows, on a day-by-day basis for the relevant time period, the consistent activity of the inventors to reduce the

invention to practice and to create the infrastructure to reduce the invention to practice. The whole purpose of the venture that was formed was to put in place the claimed invention. Therefore, in a sense, everything involved moving the concept of the claimed invention to a reduction to practice. A few examples are:

1. Equipment was purchased. (*See* Fifth Supp. Declaration, ¶¶174, 180, 209, 217, 224, 230, 237, 276).
2. People with necessary skills to program the prototype were interviewed and hired. (*Id.*, ¶¶33, 38, 78, 91).
3. Research of prospective customers was made to see what specific things were needed to make the system work. (*Id.*, ¶¶17, 39, 94, 127, 130).
4. Consultations were made with vendors of equipment and web based services. (*Id.*, ¶¶89, 92, 105, 136, 142).
5. Entities had to be recruited to participate in tests. (*Id.*, ¶65).

Again, even if, for argument purposes only, the evidence of record does not explicitly show day-to-day technical activity, it shows continuous reasonable activity always directed towards reduction to practice of the prototype. The evidence is submitted to certainly show how a handful of individuals worked diligently to put together an infrastructure and team to build the prototype. At worst, the evidence shows a combination of technical and infrastructure activity. Under the precedent of the Federal Circuit, it is respectfully submitted this is sufficient to show diligence; and, in fact, is better evidence than the *Scott* case cited above, where virtually no technical activity occurred while a whole manufacturing plant was being built to practice the claimed chemical method.

Here, the Examiner concedes technical activity occurred, but argues it was interspersed with pursuit of the business. Again, under the standard that diligence be reasonable under the circumstances, it is respectfully submitted that Applicants' evidence of record in this application more than meets this test.

Finally, the evidence of record provides answers to the lack of certain conventional documentation of software programming ("dated printouts of programming") raised by the Examiner:

1. The programming was in a Perl environment, an open source environment. (*See* Fifth Supp. Declaration, ¶307).
2. No paper copies were generated. (*Id.*, ¶308-309).
3. This is conventional practice in such web site development. (*Id.*, ¶309).
4. No electronic backups were retained. (*Id.*, ¶309).

And further, excuses for lack of conventional activity towards reduction to practice are also relevant to diligence. *Griffith*, 816 F.2d at 627. Even if, for argument's sake only, excuses were considered needed for lack of evidence of day-to-day technical activity, like the *Scott* case, it is submitted that inventors with a concept alone and without the resources to build the concept, have to get the resources. Such resources take money and time, just like the manufacturing facility in *Scott*.

The authority cited by the Examiner in the final rejection at pages 10 and 11 (citations from the Manual of Patent Examining Procedure §2138.06 have been reviewed and are submitted to be distinguishable or actually support Applicants' position:

- a. Applicants' evidence is not a mere allegation of that there were no weeks or months that the invention was not worked on or that the applicant had

been diligent, as in the *Gould v. Schawlow* and *In re Harry* cases.

Applicant has provided concrete, affirmative acts with specific dates and facts, as required in *Kendall v Searles*, 173 F.2d 986 (CCPA 1949).

- b. There is no period which is totally unaccounted for, as was the case in the *In re Mulder*, and *Fitzgerald v. Arbib* cases.
- c. Nor is this a case involving a design, like the *Arbib* case, which could be drawn on a piece of paper, and thus easily reduced to practice without substantial work, resources and time.
- d. This is not a case where vacation, ill health, lack of university funding and personnel, or budget limits for an on-going business are given as excuses, as discussed in *Griffith v. Kanamaru* and *Litchfield v Eigen*. This is a start-up that had virtually nothing but the concept, and had to build an infrastructure to create the prototype.
- e. There was no "voluntarily laying aside the inventive concept in pursuit of other projects", or lack of effort to develop it, like in the *Morway*, *Naderson*, and *Wu* cases.

The holdings of the cases cited by Applicant are submitted to be controlling and support a finding that (a) reasonable diligence has been established by the record in this application, (b) Walker is therefore not prior art to Applicants' claims, (c) the cited references thus do not support a *prima facie* case of obviousness; and (c) since all rejections rise and fall with Walker, all pending claims are allowable.



## C. Second Grounds of Traversal

In the alternative, it is respectfully submitted that even if the teachings of Walker are considered, the rejections do not present a *prima facie* case of obviousness of Applicants' pending claims. The obviousness rejections are respectfully traversed.

A *prima facie* case of obviousness must (a) in one or more references (b) available to the inventors and analogous to the invention, (c) teach, (d) a reason, suggestion or motivation to combine or modify the reference (e) in a manner which appear to show or suggest the claimed invention to one of ordinary skill in the art under the framework of *Graham v. Deere*, 383 U.S. 1 (1966). See, e.g., *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992). Applicants respectfully submit that one or more of these elements of obviousness is lacking.

### 1. Brief Discussion of Walker

Walker is entitled "Method and Apparatus for a Cryptographically Assisted Commercial Network System Designed to Facilitate Buyer-Driven Conditional Purchase Offers". Its essence is described in its abstract:

"The present invention is a method and apparatus for effectuating bilateral buyer-driven commerce. The present invention allows prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer."

While Walker emphasizes it is: (a) "bilateral"—between two parties (one buyer and one seller) and (b) buyer-driven (the buyer posts pre-defined, fixed terms for the deal, Walker's real key is its "unilateral" aspect -- prospective sellers either "take it or leave it"; *i.e.* the one seller that first accepts the terms can unilaterally legally bind the deal. Walker col. 8, lines 27-41. Its

system works, according to Walker, because of this unilateral ability of the seller to bind the buyer:

"A key element necessary to achieve a critical mass of seller participation in such a bilateral electronic buyer-driven system is the seller's ability to bind a buyer to a legal contract under the terms of the buyer's posted offer."

Walker col. 4, lines 13-16. This is corroborated in that Walker expresses its method in specific legal terms. Walker calls the buyer's posted request a "Conditional Purchase Offer" ("CPO"), which is a well know term of art. Walker col. 8, lines 46-47. A buyer-posted "CPO" is an express limitation of all of Walker's claims. *See* Walker independent claims 1, 12, 23, and 34.

Walker distinguishes a CPO from what he calls the normal "Request for Proposal" ("RFP") (another term of art) commonly used in bilateral buyer-driven markets. Walker col. 2, lines 55-67. With an RFP, the buyer asks sellers for "proposals". The buyer gets to consider any proposal, and thus, no seller can unilaterally bind the buyer. Walker literally takes several columns of its specification to discuss the legal principles behind purchase offers and acceptances which can bind the offeree to emphasize his need to have the unilateral legal binding feature. Walker cols. 4-7.

As has been pointed out by the Examiner, Walker gives different examples of goods or services which could be sold under its system, e.g., "commodities or commodity services (such as paper clips or long distance service) and on perishable items (such as airline tickets and hotel rooms)." Walker col. 3, lines 15-18. "[S]ubjects might include airline tickets, hotel rooms, rental cars, insurance, mortgages, clothing, etc." Walker col. 16, lines 5-7. "Buyer-driven markets function best when there is a well-defined purchase need, when a 'brand' provides quality assurance to the buyer such as the name of a major airline carrier or when the item is a

commodity such as oil and coal." Walker col. 2, lines 51-54.<sup>2</sup> Thus, it is accurate that Walker uses the term "commodity", but in the context of just buying and selling them as fungibles, not facilitating the formation of ag production contracts for producing agricultural crops.

Walker teaches its goal is to provide buyers desiring to purchase specific goods or services under specific fixed terms access to a wider universe of potential sellers through posting a CPO on a website, but also teaches this must require the foundational concept that any seller must have the unilateral ability to legally bind the buyer (by simple acceptance of the CPO by the seller over the internet). Walker even articulates its contribution to the art as follows:

What the present invention accomplishes, which no previous system has done before, is literally to hang buyer money on a "clothesline" for sellers to see. Attached to the money is a note describing what the seller has to agree to do in order to take the money down off the clothesline. There is no uncertainty or waste of time on the part of the seller. He knows that if he can meet the conditions set forth by the buyer, he can immediately close the sale and get paid for it. No hassles. No negotiations.

Walker, col. 10, lines 31-39. This characterization leaves no doubt about the teaching and suggestion of Walker; an internet-based method of exchange of goods and services using buyer-posted CPOs which any seller can unilaterally legally bind upon a mere push of the button, and without any uncertainties or other steps.

## **2. Brief Discussion of Manual**

The Manual is a description of futures trading on a futures market exchange (specifically the Chicago Board of Trade):

"Futures exchanges provide a location for buyers and sellers to meet and, through an open outcry auction process, discover a price for specific futures and options contracts."

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<sup>2</sup> Walker appears to teach its system is not well suited for agricultural production contracts, which can require a number of contracts and contracts with varying terms: "As a rule, the greater the number and complexity of the buyer's purchase conditions, the more difficult it is to have a buyer-driven market...." Walker col. 2, lines 45-49.

Manual pg. 35, first paragraph. It pertains to agricultural crop "futures". It describes how the trading of futures works, including the persons and steps involved. It also describes how certain information can be displayed on price boards and monitors.

Attached Exhibit 2 is a brochure from the U.S. Government Commodities Futures Trading Commission. It describes the nature of futures contracts (*see* definition at Exhibit 2, pg. 2), and how they are traded as financial investments.

The Manual likewise describes how the futures contracts are bought and sold. It is done under a bid and offer system:

"Offers to buy or sell are made by shouting out prices in an auction style so that each trader in the pit has an opportunity to take the opposite side of a trade."

Manual pg. 38, 2<sup>nd</sup> para. Buyers make "bids" (number of futures contracts and price). Sellers make offers (number of futures contracts and price). Manual pg. 38. Then:

"When a trade is made, each trader writes the completed transaction on a trading card or multipart order form....These trading cards constitute original records, and from them the essential data are transferred to the buyer's and seller's clearing firms....Each clearinghouse guarantees contract performance of all contracts traded and cleared at the futures exchange."

Manual, Pg. 38.

Therefore, as made clear by the Manual, the futures exchange system is a simple bid and offer system for buying and selling specific fixed term futures contracts. Buyers bid on certain contracts they want through their representatives on the exchange floor. A seller can accept a bid and legally bind it. Sellers make offers. A buyer can accept the offer and legally bind it.

As such, the Manual does not have any teaching of, and does not address, a solution to facilitating the formation of ag production contracts.

### **3. Discussion of Applicants' Invention and Differences From Walker and the Manual**

For convenience, Applicants' claims are attached at the back of this discussion as Exhibit

1. The independent claims 1, 13, 25, and 26 are each broken down into its preamble and sub-parts labeled (a), (b), etc... These sub-parts will be referred to in the following discussion to point out certain language in the independent claims.

#### **a. Preamble and Context of Applicants' Claims**

First, it is important to note the specific context of Applicants' claimed invention.<sup>3</sup> Just as Walker describes and claims a new approach to buying well-defined goods and services using the internet (buyers post CPOs that are unilaterally bindable by any seller—"hanging money on the clothesline"), each of Applicants' claims is directed towards a new way to facilitate the formation of agricultural production contracts. Each independent claim specifically has language to this effect—"the contracting of agricultural commodities". Further, independent claims 1 and 13 define specific methods according to aspects of the Applicants' invention. They describe a specific combination of method steps in the context of agricultural crop production contracts.

In comparison, Walker has no suggestion or teaching the formation of agricultural production contracts.<sup>4</sup> As discussed, Walker deals with CPOs for the purchase of well-defined goods or services. *See* Walker Summary of Invention. It has nothing to do with forming contracts governing the production of agricultural crops. Furthermore, Walker eschews negotiation, in favor of its unilaterally ability to bind. Walker does not address a situation of widely varying contract types, terms, contingencies, etc. involved with ag production contracts.

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<sup>3</sup> The Applicants' claims must be analyzed "as a whole". *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992).

<sup>4</sup> It is respectfully submitted that Walker is non-analogous to Applicants' invention because it is neither (a) in the same subject matter nor (b) reasonably pertinent to the problem addressed by Applicants' invention. *See, e.g., Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

Nor does the Manual deal with the formation of ag production contracts.<sup>5</sup> Both Walker and the Manual describe systems for publishing offers to buy or sell certain things, and having in place the ability for one party to unilaterally legally bind the deal. With Walker, if it is paper clips (a "commodity" under its use of the word), the buyer issues a CPO for a fixed number of clips and fixed price it will buy them for. If airline tickets (the "commodity" of the services of flying the buyer to desired destination(s)), the buyer issues a CPO for a fixed destination, airline, times, etc. and a fixed price. In either case, any seller can unilaterally legally bind both parties by accepting the CPO. For the Manual, the buyer bids for a fixed number of futures contracts (*see* Exhibit 2—it is a financial instrument that can be bought and sold, just like stocks and bonds) at a fixed price, or the seller offers a fixed number of futures contracts at a fixed price. In either case, a party can unilaterally legally bind both ends of the deal by accepting.

Thus, neither Walker nor the Manual describe a method for facilitating the formation of agricultural production contracts. An agricultural production contract is a long-known concept. They can take many different forms. They can be based on variables. Neither Walker nor the Manual, either singly or in combination, describe or teach a method of facilitating the formation of ag production contracts. Walker and the Manual do not teach the ag production context; where multiple parties, each having differing desires, capabilities, and goals, can interact, contemplate, adjust, and change their positions prior to forming legally binding contracts. As explained in Applicants' specification, the methods of claims 1 and 13 are to facilitate the making of and the tracking of agricultural production contracts. There is no "sale" of goods or "sale" of contracts. The method is to help form the contracts. It is not a method to sell contracts.

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<sup>5</sup> It is submitted that the Manual is also non-analogous to Applicants' invention for the same reasons as Walker is not.

Therefore, neither Walker nor the Manual discusses the same subject matter as the present application, and neither is pertinent to the issues addressed by and problems attempted to be solved by the present invention. Neither Walker nor the Manual is analogous art to Applicants' claims.

Applicants' independent claims 15 and 26, though apparatus claims, contain similar language to claims 1 and 13, and therefore distinguish from Walker and the Manual on the same basis as independent method claims 1 and 13.

Applicants claimed invention allows potential authorized parties to view information (which might change from moment to moment), contemplate, adjust inputs if desired, and watch or participate in the development of agricultural crop production obligations. Support for this can be found throughout Applicants' specification. As described above, this distinguishes from the primary reference U.S. Patent 5,794,206 to Walker et al. (Walker), which describes its system as allowing:

"prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer."

*See* Walker Abstract. As further pointed out, Walker uses a "bilateral buyer driven commerce" system so one buyer can publish to a wide set of sellers a conditional purchase offer (CPO) and one seller from that universe of potential sellers to unilaterally bind (legally) the one buyer to that CPO. Walker's discussion of "Basic Contract Law" and "Electronic Contracting Law in the Current State of the Art" (Walker, columns 4-7) apparently is to support Walker's focus on a

single seller being able to unilaterally legally bind a single buyer's CPO over the internet.<sup>6</sup> There is no "facilitating and tracking" the process of forming any contract in Walker. Its central purpose is to have a fixed published CPO that is immediately acceptable and legally bindable by a single other party.

The Manual describes the well-known futures exchange bid and offer system. The commodity, the futures contracts, are bought and sold. The futures contracts themselves are not created. In comparison, Applicants' claims are not methods and apparatus for buying and selling commodities. They are methods and apparatus for facilitating the formation of contracts for the production of crops.

Thus, Applicants' claims specifically distinguish from Walker and the Manual.

#### **b. Databases**

Each of independent claims 1, 13, 15, and 26 describe a database for storage and retrieval of data related to formation of ag production contracts. In the context of the method as a whole, this allows multilateral parties interested or involved with an agricultural production contract to introduce (store) in the system information relevant to them. Authorized system users can look at (retrieve) information that could be helpful in deciding what they want to do (*see, e.g.*, Applicants' specification pg. 3, line 3).

Applicants' claims have specific language relevant to ag production contract formation. For example, step (c) of claim 1 refers to "types and amounts of agricultural commodities desired by one or more agricultural commodity buyers". Step (b) of claim 13 refers to "data related to the number of acres or bushels of agricultural crops desired by one or more agricultural

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<sup>6</sup> Walker does contemplate the potential use of its system to allow counter-offers from any seller (see, e.g. column 22, line 39-column 23, line 19), but it essentially converts to the single seller issuing a CPO with a single buyer having the power to unilaterally legally bind that CPO.



commodity buyers". These steps facilitate the formation of a production contracts by specifying the information that prospective crop buyers can store in the database system, specifically number of acres or bushels desired (*see, e.g.*, Applicants' specification pg. 4, line 26, and pg. 6, lines 23-24). As explained in Applicants' specification, these are desired amounts. Because the crops are not yet produced, and the very purpose of the system is to form production contracts to make crops to meet the desired goals, the system allows such approximations in either acres or bushels as such is conventional for these contracts.

In comparison, Walker and the Manual have very well defined goods or services, not estimated production units. But further, as set forth in Applicants' specification, the buyer's "desired" amount is posted in the database, not as a CPO. It is not legally bindable unilaterally by any grower ("seller"). It is posted so that the buyer can get interest from sellers and sellers can look at what general quantities and types of grain are desired by the grain processors. And, optionally, it can also be viewed by authorized third parties (e.g. grain storage companies like elevators, seed companies, etc.).

Applicants' claim 13, step "(c)" facilitates the formation of a production contract by allowing storage in the database number of acres or bushels amounts any number of growers ("sellers") might be willing to commit (*see, e.g.*, Applicants' specification pg. 7, lines 3-5). This allows growers to jump in and preliminarily commit towards the desired goal posted by a buyer. Unlike Walker and the Manual, these entries by growers/sellers are commitments, in the sense the grower gets to submit a number it is willing to commit, but they are not unilaterally legally bindable by the grower (or the buyer). This step is another example of a difference from Walker and the Manual; a difference that is important to the formation of ag production contracts.

Walker stores goods and services for sale. The Manual stores futures contracts for sale. They do not store data for the purpose of forming ag production contracts.

Further Walker and the Manual do not have any teaching of storing data about partial commitments from growers indicating a willingness to negotiation for ag production contracts.

Independent claims 15 and 26 have similar language.

**c. Display Functions**

Independent claims 1, 13, and 25 include an explicit step or element (step (d) of claim 1, step (d) of claim 13, and element (g) of claim 25 describing display of the information from the database discussed above (*see, e.g.*, Applicants' specification pg. 7, lines 3-5). Again, this is not a display of any CPO like Walker, or any bid or offer like the Manual. It is a display for authorized users, which could include buyers, sellers and/or third parties, to view any number of desired goals of buyers and current commitments of sellers. The displayed information is not unilaterally bindable by any party. And further, the information is not necessarily fixed (unlike the fixed CPO's and bids and offers of Walker and the Manual).

Unlike Walker's CPO for fixed terms immediately bindable by a single seller, Applicants' invention of claims 1, 13, and 25 publishes (a) a desired quantity, type, etc. by buyers and (b) indicated potential commitments of sellers by quantity, type, etc. With Walker and the Manual, the published or posted information is specific and is "take it or leave it".

This is important, again, in the context of what is important to facilitate formation of ag production contracts. As described in detail in Applicants' specification, the state of the art practice required a onerous, sometimes chaotic, burden on all parties involved in ag production contracts; *e.g.*, hundreds of calls to try to identify potential growers.; having to communicate and

rely on third parties such as seed companies and elevator operators; uncertainty whether goals would be met; uncertainty whether individual production contracts would be finalized; uncertainty because of changes, etc. Applicants' invention, and the specified display of information to authorized viewers (various levels of authorization are possible)<sup>7</sup>, is distinct from Walker and the Manual. They do not teach, contemplate, or suggest a real time display showing desired amounts of each buyer and multilateral present commitments towards that desired amount.

Note also that Applicants' claims 1, 25 and 26 specify other information which is displayed that can be useful in facilitating formation of ag production contracts, namely "type, amounts or deliveries" of the crops to be produced. Again, since this is a system for forming ag production contracts, the display of such information is important to all users. It effects whether a buyer might accept a grower commitment. It effects whether a grower will sign a contract with a buyer. It effects whether a seed seller or elevator will be able to commit their goods or services.

#### **d. Dynamic Updating**

Each of the independent claims addresses the concept of having data directed at both (a) desired amount of buyer and (b) amounts growers indicate willingness to commit at time of harvest or other time. *See, e.g.*, Claim 1, step (e), claim 13, step (e), claim 25, steps (g) and (h), and claim 26, steps (d). Walker and the Manual neither disclose nor suggest this.

Additionally, claim 13 steps (e) and (f) specifically describe one aspect of a dynamic updating to assist formation of ag production contracts. These steps specify that any authorized

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<sup>7</sup> *See, e.g.*, Applicants' specification pgs. 8-11, and original claim 28.

grower user of the system can input "a specific amount of the crop which the grower is willing to commit to the desired agricultural crop." (*see, e.g.*, Applicants' specification pg. 7, lines 5-21) Here the grower can be one who has already committed some amount to the buyer desire, or a new grower. Either can commit "a specific amount" to a specific buyer's desire ("the desired agricultural crop").

Note that the method of Claim 13 allows multiple growers ("sellers") to commit production to the same grain processor's ("seller's") desired goal. This is truly multilateral, as distinguished from the bilateral system of Walker, where one party unilaterally binds another, single party to the entire specified terms of a single CPO. This is also distinguishable from the Manual, where one party can unilaterally bind the other to a specific offer or bid, and not part thereof.

The importance of this difference from Walker and the Manual can be seen through an example. Assume a large grain processor inputs a desire for 4000 acres of high oil corn. Authorized users can see this desired amount and contemplate their future planning. A first grower can decide to "jump in" and conditional commit 200 acres. A second grower can "wait" and see what transpires with the marketplace. If third, fourth, and fifth growers then commit 1000 acres each, the first through fifth growers as well as other growers, can still commit, because the entire desired amount of the buyer has not been committed (800 acres remain).

The buyer can watch and see how the market is responding to its desire. It can see which growers have indicated willingness to commit; including whom they are and where they are from. The buyer can then make judgments and plans about whether to move forward to try to form an ag production contract with any of the committed growers, or decide the reverse — decline to move towards that. This could occur for a number of reasons, including that a

particular grower is from a geographic area that is not desirable to the buyer. Seed sellers and elevators, if authorized, can plan strategies regarding inventories or reserving storage space. The multilateral nature of the ag production contract world can take advantage of these aspects of Applicants' invention.

Finally, the system allows further commitments from growers and will inform system users if the desired amount is fully committed, or if a commitment exceeds remaining need.

Neither Walker nor the Manual contemplate this dynamic, real time intelligence to the parties of interest to ag production contracts. Buyers can watch and plan. Buyers gain intelligence about trends, interest, capacities, and other marketplace factors. Buyers can involve third parties (e.g. seed companies and elevators) in planning. Buyers can select to pursue contracts with specific committed growers.

Growers can wait or jump in. They can elect to jump in with a certain commitment and add to it later. They can indicate a willingness to produce towards a buyer's desired amount and hold a priority position subject to both buyer and grower agreeing to terms. Growers can jump in initially after others have committed towards a desired amount, or can add to their prior commitment.

Both buyer and seller must agree to the terms and both sign the contract for it to be legally binding. This is advantageous, because it allows thorough review and contemplation of any of the parties prior to locking in an obligation. To assist this contemplation, the system displays present commitments of sellers to a buyer's desire. Also, this step helps contemplation of any of the potential parties because it continuously is updating. A buyer (as opposed to seller) can periodically check the allocation and decide if it is the right time to try to bind one or more of the sellers. The buyer can check if the committed sellers are desirable (e.g. are they from the

right geographic areas, are they growers that the buyer has dealt with before, do they have a track record of meeting production, how much of the desired amount are certain sellers able to commit to, etc.) Similarly, sellers can contemplate whether the deal is desirable (do I want to commit that much, will I be able to get sufficient storage, will I get the right seed, etc.). As stated previously, authorized third parties can also watch the development of the contracting, and the real time adjustment so that still new sellers, elevators, seed companies, or the buyer can track the progress of the ag production contracting process. And further, the system can update to show what part of the buyer's desired amount has been actually contracted by mutual agreement of buyer and seller(s), and what part remains open to contracting (which part can dynamically change and be continuously updated, as described above).

Walker does discuss the possibility of a seller to "counter-offer" to a buyer's CPO, but in the context of simply doing the same in reverse—issuing a CPO to the buyer, where the buyer can unilaterally bind with just an acceptance. Walker, col. 22, line 39 to col. 23, line 19. This does not teach real-time dynamic updating to a buyer's desired amount.

**e. Contract Formation**

The last step of Applicant's claims 1, 25 and 26 specifically discuss contracts. This is in the context, however, of the steps or elements preceding. As discussed above, the claims are directed at facilitating the formation of ag production contracts. The specifics in the claims regarding the type of data in the database, how it is displayed, and how it is useful in allowing buyers and growers to consider forming the ag production contracts, differentiate from Walker and the Manual. Note how claim 26 specifically states in element (e) that "in response to a

command input into the types, buyers and sellers can form contracts relates to the types, amounts or deliveries of the commodities".

#### **4. Lack of Obviousness of Claims.**

For at least the foregoing reasons, it is respectfully submitted that Applicants' independent claims 1, 13, 225 and 26 are patentably distinct from the cited art of record.

First, it is submitted that Walker and the Manual are not analogous art for purposes of obviousness. *Wang Labs. Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993). If not analogous, a *prima facie* case of obviousness fails.

Secondly, neither Walker nor the Manual teach or suggest combination with each other. Walker is directed to sales of fungibles using CPO's. The Manual is directed to offers and bids of standardized, transferable, exchange-traded contracts which are highly regulated. There is no suggestion or reason to apply a simply commercial buy-sell of fungibles to such a regulated, exchange-traded system, or *vice versa*.

But third, even if combined, there is no teaching or suggestion of Applicants' claims. Both Walker and the Manual, in their own distinct environments, are directed to systems that allow one party to unilaterally legally bind another party to purchase either goods or services (Walker) or a contract. Neither Walker or the Manual alone, or if combined, teach or suggest anything about facilitating the formation of ag production contracts, as required by Applicants' claims. Neither Walker or the Manual singly or in combination teach or suggest anything about a database and display format where multiple sellers (growers) can partially commit to one buyer's desired production goal, with dynamic, continuous updating so the buyer can track the progress towards getting indicated commitment to its desired goal to assist in facilitating

formation of production contracts towards meeting that goal. Neither Walker nor the Manual teach or suggest this flexible but centralized system to assist multiple entities to more effectively and efficiently get the intelligence to then move to form individual ag production contracts.

The Microsoft Dictionary, used as a secondary reference against dependent claims 3 and 19, does not teach or suggest anything that remedies what is lacking in Walker and the Manual. The Peterson patent, used as a secondary reference against claim 21, does not teach or suggest anything that remedies what is lacking on Walker and the Manual.

The above-described distinctions are central to why Applicant's claims patentably distinguish from Walker alone or in combination with any of the secondary references cited in the Office Action. Facilitating the formation and tracking of contracts for the production of agricultural crops is not the same as publishing a fixed CPO and waiting for a seller to unilaterally bind its commitment to fill that CPO, and not the same as bidding on or offering futures contracts and waiting for a party to unilaterally bind.

Walker is a "take or leave it" system. The sellers either agree to bind themselves to the terms of the CPO or "leave it". With claim 13, one or more buyers can indicate a willingness to purchase an amount of crop. One or more sellers can indicate a willingness to commit to produce an amount of crop. They can change their indicated willingness. But this allows the relevant players in the agricultural crop production contract business to cooperate in the development of contracts that fit their needs or desires. It also fosters competition. Competing growers can watch and adjust their commitments to try to win approval of a buyer. Buyers can alter desired allocations to win approval of sellers.

As the Office Action correctly points out, in Applicants' claimed system a buyer may, for any of a variety of reasons, reject one seller's commitment, *e.g.*, because it does not want that



quantity produced at that geographic location. They buyer simply might not want to deal with a given seller. The buyer may not like the quantity a seller is willing commit. This is not possible with Walker because a seller in Walker can unilaterally bind the buyer. Likewise, this is not possible with futures contracts as once a bid or offer is made, it can be unilaterally accepted.

Further, Applicants' claims are not strictly bilateral buyer-driven methods of commerce. As stated, it can be multilateral. Not only can it involve multiple buyers and multiple sellers relative to each multiple buyer but third parties in the sense of elevators, seed companies, if authorized, can gain access and benefit from tracking and contracting. As explained in Applicant's specification, buyer or sellers may want to involve elevators to store grain involved in a contract. Elevators themselves might want to monitor allocations, locations, not only to solicit business but to carefully monitor its own inventory or storage capacity. Seed companies may use it as a marketing information tool and/or to gauge their sales.

And, again, Applicants' claims are not constrained by Walker's or the Manual's requirement that one of two parties in the bilateral exchange be able to unilaterally legally bind the other. For example, as explained in Applicant's specification, Applicants' claims relate to contracting of agricultural commodities, not to selling agricultural commodities. It does not require ability for one party to unilaterally bind. Rather it allows both buyer and any seller to contemplate the current state of the contracting process before agreeing to bind itself. It is only when both buyer and seller sign up is there a legally binding contract formed. This also relates to the fluidity and dynamic nature of the method, allowing real time updating of proposed commitments for production and allocation so that buyer and sellers can track and decide if and when they want to bind themselves.

The Final Rejection points out it is not relying solely on Walker for the obviousness rejection of the claims. However, Walker is cited as the primary reference. Therefore, if material limitations of the claims are not found in Walker, there must be some suggestion or teaching in Walker to combine with the teaching of a secondary reference and, once combined, there must be a cumulative teaching of the claimed invention as one of ordinary skill in the art would interpret the cited references. It is respectfully submitted that there is neither in Walker. Walker does not teach or suggest utilization with the selling of futures contracts. And Walker does not teach or suggest a method for facilitating the formation and tracking of agricultural production contracts according to the language of Applicants' claims. And, even if Walker was combined with the teachings of the Manual, they cumulatively do not teach or suggest a method for facilitating and tracking of progress of agricultural production contracts according to the claims. *In re Fritch, supra*. The complete lack of teaching of the same does not provide one of ordinary skill in the art any motivation to create the method of Applicants' claims. The above discussion specifically points out language in the claims that differentiates the claims from the cited art.

A claimed invention is not obvious if the teachings of the cited references solve a different problem. *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 780 F.2d 1452 (Fed. Cir. 1984). It is respectfully submitted that the only teaching or suggestion of Applicant's claims comes from Applicant's application itself. This cannot support a *prima facie* case of obviousness. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572 (Fed. Cir. 1984)

Therefore, it is respectfully submitted that a *prima facie* case of obviousness cannot be based on the combination of Walker with any of the cited secondary references.

## 5. Brief Discussion of Applicants' Dependent Claims

Pending claims 2-12, 14-23, 27 and 28 (see attached Exhibit 1) are dependent from one of independent claims 1, 13, 25, or 26, and are submitted to be allowable for the reasons expressed in support of the independent claims. But further, other examples of limitations exist in the dependent claims which are neither disclosed nor taught by the cited references:

Claim	Limitation
9	Storing data regarding buyer's desire as to what areas the agricultural products should come from
10	Display list of crops available in desired areas; and updating any change in data
14	Managing delivery times and methods
15	Managing quality data for growing or delivered products
16	Pricing based on a variable
17	Variable is time or delivery or quality measure
21	Allocating stored data relating to number of acres desired among plurality of elevators
22	Allocating number of acres desired into distinct geographic regions
23	Allocating data according to one of: product type, time of delivery, method of delivery, end-user buyer.
27	Restriction of access to the system
28	Varying levels of access to data by authorized users of the system

Therefore, it is respectfully submitted that the dependent claims are allowable.

## D. Real World Example of Invention

Attached Exhibit 3 is discussion and an illustrative example from the owner of the present application of a real world implementation of the invention to further show how the invention differentiates from the cited art.

Exhibit 3, page 1 further describes how the claimed method, and the real time, dynamic allocation information, allows better and more efficient cooperation between buyers and sellers

to form agricultural production contracts. It also discusses how the invention differs from the cited bid/offer systems.

Exhibit 3, pgs. 2-3 illustrative how the database system is set up for a variety of "buyers" ("contractors") and different agricultural crop production contract programs, as well as a variety of different "sellers" ("growers") pursuant to Applicants' claim 13, preamble and steps "(a)" - "(d)". Authorized users can view such information via an internet browser and passwords.

Exhibit 3, pages 4-5, describes how contractors can specify desired terms, and can allocate and adjust the same.

Exhibit 3, page 5 indicates how the Contractor can select contract parameters and how contracts with growers can be facilitated by designating conditional grower commitments as "pending". The system treats growers' commitments as "pending" for a given period of time. The Contractor can look over the pending commitments and choose which one(s) it wishes to pursue. In the meantime, growers can adjust their pending commitments. As indicated at page 5, if a Contractor selects a grower's pending commitment, it can proceed to a "signed phase" or status if accepted by both Contractor and grower, which triggers a procedure to finalize the mutual acceptance through signatures of the parties. Page 5 gives examples of how the allocations can change during this development of the contract.

Exhibit 3, page 6 discusses how contracts can be "managed", including adjustment of the allocations.

This is but one example of the forms the invention of claim 13 can take. It illustrates the special circumstances and considerations involved with an agricultural crop production contract, and how it is not simply a CPO or bid/offer arrangement.

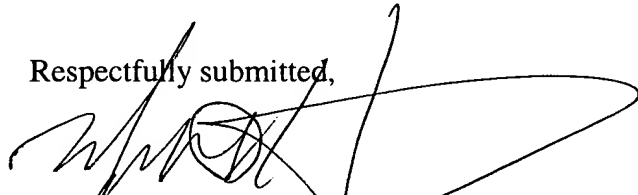
**E. CONCLUSION**

For the reasons expressed above, it is respectfully submitted that all matters raised in the Final Rejection have been addressed and remedied, and that the application is in form for allowance. Favorable action is respectfully requested.

Any fees are addressed in the concurrently filed Fee Calculation Sheet. It is not believed that any additional fees or petitions for extension of time are required for entry of this response. However, if any such fee or petition for extension of time has been inadvertently overlooked, please consider this a request therefore, and charge any required fee to deposit account 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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Attachments: Exhibits 1-3

**EXHIBIT 1—APPLICANTS' CLAIMS (with independent claims broken down into lettered steps)**

1.(original)

A method of facilitating the contracting of agricultural commodities using the Internet comprising the steps of:

- (a) providing a Web server connected to the Internet;
- (b) providing a centralized database system for the storage and retrieval of data;  
storing data in the database system relating to types and amounts of agricultural commodities
- (c) desired by one or more agricultural commodity buyers;  
in response to a command input into the system, displaying a listing of desired commodities including information related to the types, amounts or deliveries of the commodities;
- (d) receiving input data from a supplier of an agricultural commodity relating to a specific type and amount of a commodity which the supplier is willing to supply to the buyer at harvest or at other times; and
- (e) generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer.

2. (original)

✓ The method of claim 1 wherein information inputted into the system is inputted via a Web browser.

3. (original)

✓ The method of claim 1 wherein information inputted into the system is inputted via an applet in Java or another program language.


4. (original)

✗ The method of claim 1 wherein the agricultural commodities are comprised of agricultural products.


5. (original)

✗ The method of claim 1 wherein the agricultural commodities are comprised of commodity grains or oilseeds.


6. (original)

The method of claim 1 wherein the agricultural commodities are comprised of fruits or vegetables 

7. (original)

The method of claim 1 wherein the agricultural commodities are comprised of animals or fish. 

8. (original)

The method of claim 1 wherein the agricultural commodities are comprised of horticultural products or ornamental plants. 

9. (original)

The method of claim 4 wherein the step of storing data in the database system relating to types and amounts of agricultural commodities further comprises the steps of:  
storing data identifying a quantity of agricultural products desired by the buyer; and  
storing data related to a desired allocation of the quantity of agricultural products among a plurality of areas.

10. (original)

The method of claim 4 wherein the step of displaying a listing of desired commodities further comprises the steps of:  
displaying a listing of desired agricultural products  
available in  
desired areas; and  
updating the listing to reflect a change in data as a result of contracting between the supplier and the buyer.

11. (original)

The method of claim 1 wherein the contract generated is a paper contract.

12. (original)

The method of claim 1 wherein the contract generated is an electronic contract executed using digital signatures.

Claim 13 (Original):

A method of facilitating and tracking the contracting of agricultural crops using a wide area distributed network comprising the steps of:

- (a) providing a centralized database system for the storage and retrieval of data;
- (b) storing data related to the number of acres or bushels of agricultural crops desired by one or more agricultural commodity buyers;
- (c) storing data related to the number of acres or bushels of the agricultural crops committed for the production of the crops by one or more growers;
- (d) displaying a listing of the desired crops including information related to the number of acres or bushels desired and the number of acres or bushels already committed;
- (e) receiving input data from a grower relating to a specific amount of the crop which the grower is willing to commit to the desired agricultural crop; and
- (f) updating the data in the database to reflect the additional acres committed by the grower as indicated in the input data so that the listing of the desired crops can be displayed in real time showing the allocation of acres or bushels committed to the desired crop.

14. (original)

The method of claim 13 further comprising electronically managing delivery times and methods.

15. (original)

The method of claim 13 further comprising electronically managing quality data for growing or delivered products.

16. (original)

The method of claim 13 further comprising electronically pricing the contract based on a variable.



17. (original)

The method of claim 16 wherein the variable is selected from the set comprising time of delivery and a quality measure.

18. (original)

The method of claim 13 wherein the centralized database system is installed on an Internet Web server, and users of the database system access the database system via an Internet Web browser.

19. (original)

The method of claim 18 wherein the centralized database system is installed on an Internet Web server, and users of the database system access data using Java or another applet.

20. (original)

The method of claim 13 wherein the agricultural crops further comprise agricultural products.

21. (original)

The method of claim 13 further comprising the step of allocating the stored data relating to the number of acres of agricultural crops desired among a plurality of elevators.

22. (original)

The method of claim 13 further comprising the step of allocating into distinct geographic regions the data related to the number of acres of the agricultural crops desired.

23. (original)

The method of claim 13 further comprising the step of allocating the data according to one of the following:  
product type, time of delivery, method of delivery, end-user buyer.

25. (original)

An apparatus for contracting for agricultural commodities over a wide area distributed network comprising:

- (a) an application/web server;
- (b) a database server;
- (c) a communications link between the application/web server and the database server and the wide area distributed network;

- (d) one or more remote user terminals;
- (e) software on computer storage medium which facilitates:
- (f) storing data in the database system relating to types and amounts of agricultural commodities desired by one or more agricultural commodity buyers;
- (g) in response to a command input into the system, displaying a listing of desired commodities including information related to the types, amounts or deliveries of the commodities;
- (h) receiving input data from a supplier of an agricultural commodity relating to a specific type and amount of a commodity which the supplier is willing to supply to the buyer at harvest or at other times; and
- (i) generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer.

26. (original)

A system for contracting for agricultural commodities over a wide area distributed network comprising:

- (a) a central computer system in operative communication with a wide area distributed network;
- (b) a plurality of widely distributed seller computers in operative communication with the wide area distributed network;
- (c) a plurality of widely distributed buyer computers in operative communication with the wide area distributed network;
- (d) a database stored on said central computer system containing data related specific type and amount of a commodity which the seller is willing to supply to the buyer at harvest or at other times, and types and amounts of agricultural commodities desired by one or more agricultural commodity buyers;
- (e) so that, in response to a command input into the system, buyers and sellers can form contracts related to the types, amounts or deliveries of the commodities.

27. (original)

The system of claim 26 further comprising a software security component to restrict access to the system.

28. (original) -

The system of claim 27 wherein the software security component comprises varying levels of access to data by authorized users of the system.

## **EXHIBIT 2 – Brochure from Commodities Trading Futures Commission** [downloaded from [www.cftc.gov](http://www.cftc.gov)]

CFTC P-106A ( 01-97)

### **FUTURES AND OPTIONS -- WHAT YOU SHOULD KNOW BEFORE YOU TRADE**

Trading commodity futures and options is not for everyone. It is a volatile, complex, and risky business. Before you invest any money in futures or options contracts, you should:

1. Consider your financial experience, goals, and financial resources and know how much you can afford to lose above and beyond your initial payment.
2. Understand commodity futures and option contracts and your obligations in entering into those contracts.
3. Understand your exposure to risk and other aspects of trading by thoroughly reviewing the risk disclosure documents your broker is required to give you.
4. Know who to contact if you have a problem or question.

The purpose of this brochure is to provide you with general information about trading commodity futures and options and to encourage you to ask more questions and gather more information before you open an account.

### **UNDERSTAND YOUR FINANCIAL GOALS AND RESOURCES**

#### **Who trades in commodity futures and options and why?**

Most of the participants in the futures and options markets are commercial and institutional users of the commodities they trade. For example, a company or individual who holds an asset such as coffee, corn, soybeans, U.S. Treasury bonds, or a portfolio of stocks, wants the value of that asset to increase. That person also wants to limit, if possible, any loss in value. The company or individual may use the commodity markets to take an opposite position which can minimize the risk of financial loss from holding those assets when and if their price changes. This is called "hedging."

Other participants are speculators who hope to profit from changes in the price of the futures contract. A speculator buying a futures contract or call option, or selling a put option, hopes to profit from rising prices, while a speculator selling a futures contract or call option, or buying a put option, hopes to profit from declining prices. Because, unlike a hedger, a speculator does not own the underlying commodity, the components of the underlying index, or other product, losses in the futures market are not offset by gains in the cash market, and speculators can lose substantial amounts.

Individuals do participate in the market. An individual who owns or runs a business might participate as a hedger. Or, an individual with a substantial and diversified portfolio of investments might speculate using futures or options contracts. Individual investors should also have adequate resources to absorb the significant losses which can occur in futures and option trading.

#### **Can futures and option trading meet my investment goals?**

Futures trading is inherently complex and risky, and it is not appropriate for all investors. You should know how much you potentially can lose and honestly evaluate if you can afford to lose it in view of

your financial resources and investment goals, and communicate this to your broker. If you decide you have the resources and the reasons to invest in futures, you should also determine the extent to which you plan to rely on advice from a broker versus making your own trading decisions. Then you should evaluate and compare the methods of trading before choosing the one you feel will best implement your goals. Finally, set some limits on the length of time you are willing to invest and the amount of loss you are willing to incur. Like other financial markets, futures are cyclical and gains may not be immediate. And remember that, because of the leveraged nature of futures, losses can be more than your original deposit.

### **Is there anything I should watch out for?**

First, if it sounds too good to be true, it probably is. Promises of huge returns with limited risk are usually false. Be on the alert for anyone who downplays the importance of the disclosure statement; you should always receive one and always read it thoroughly before you open an account. Do your homework! Don't be pressured to "act now." Always ask questions. Beware when a salesperson tells you to borrow money to invest, and never agree to give money to someone you have never met. Watch out for guarantees of profit or boasts about past performance. Do not rely on claims of profits due to "predictable" seasonal or market cycles or claims based on the impact of current news events.

There is fraud in every business and the futures industry is no exception, so you owe it to yourself to be careful. You may want to read Investment Swindles: How They Work and How to Avoid Them, a publication of the National Futures Association, or Swindlers are Calling, by the Alliance Against Fraud in Telemarketing, available from the CFTC or NFA.

Before you open an account, you should always check on the company's or individual's registration status by calling the National Futures Association (the private regulatory body that handles registration processing for the CFTC) at its toll-free number: 1-800-621-3570. If you live in Illinois, the NFA can be reached at 800-572-9400. The NFA's Information Center can also be contacted through the internet by sending an e-mail message to NFA's web site (<http://www.nfa.futures.org>). The NFA can also provide information on any disciplinary actions which have been brought against a registrant. Information on sanctions in effect against commodity professionals is also available on the CFTC's World Wide Web site (<http://www.cftc.gov>).

## **UNDERSTANDING COMMODITY FUTURES AND OPTION CONTRACTS AND YOUR CONTRACTUAL OBLIGATIONS**

### **What are commodity futures and option contracts?**

A futures contract is a legally binding agreement between two parties to buy or sell in the future, on a designated exchange, a specific quantity of a commodity at a specific price. The buyer and seller of a futures contract agree now on a price for a product to be delivered or paid for at a set time in the future, known as the "settlement date." Although actual delivery of the commodity can take place in fulfillment of the contract, most futures contracts are actually closed out or "offset" prior to delivery.

An option on a commodity futures contract is a legally binding agreement between two parties which gives the buyer, who pays a market determined price known as a "premium," the right (but not the obligation), within a specific time period, to exercise his option. Exercise of the option will result in the person being deemed to have entered into a futures contract at a specified price known as the "strike price." In some cases, an option may confer the right to buy or sell the underlying asset directly, and these options are known as options on the physical asset.

### **How do I go about trading futures or option contracts?**

In the United States, futures contracts and options on futures contracts must be executed on or subject to the rules of a commodity exchange. But you, as an individual, cannot trade directly on an exchange. A person or firm must trade on your behalf. People and firms who trade on your behalf as a customer generally must be registered with the Commodity Futures Trading Commission.

**There are two general categories of accounts through which you may trade.**

**Individual Account.** In an individual account, trading is done only for you. An individual account may be a "non-discretionary" account, which means that the broker may not execute any transactions without your prior approval. In a "discretionary" individual account, you give permission for the firm carrying your account or some third party to make trading decisions on your behalf.

You may open an individual account with a registered Futures Commission Merchant or through an Introducing Broker. An Introducing Broker may accept your orders and transmit them for execution to a Futures Commission Merchant with whom he has a relationship. An Introducing Broker is not permitted, however, to accept any funds from you. You deposit funds directly with a Futures Commission Merchant. In an individual discretionary account, you grant power-of-attorney to a Futures Commission Merchant, an Introducing Broker, one of their Associated Persons, or a Commodity Trading Advisor to make trading decisions on your behalf.

**Commodity Pool.** You may also trade commodities through a "commodity pool." In a commodity pool, you are purchasing shares or interests in the pool, and trades are executed for the pool, rather than for the individuals who have interests in the pool. Pool participants share ratably in gains or losses.

**What are my contractual obligations?**

**Individual Account.** When you enter into a futures or option contract through an individual account, you are required to make a payment referred to as a "margin payment" or "performance bond." This payment is small relative to the value of your market position, providing you with the ability to "leverage" your funds. Because trading commodity futures and option contracts is leveraged, small changes in price, which occur frequently, can result in large gains or losses in a short period of time.

Each day, your broker will calculate the current value of futures and option contracts held in your account. If the equity in your account has declined in value to the "maintenance margin level" (approximately 75% of the amount required to enter into the trades originally), you are required to provide more margin money to restore the initial margin level (this is called a "margin call"). This eliminates the needs to make repeated margin calls when daily price changes are relatively small.

If you fail to meet a margin call within a reasonable period of time, which could be as little as one hour, your brokerage firm may close out your positions to reduce your margin deficiency. If your position is liquidated at a loss, you would continue to be liable for that loss. You can, therefore, lose substantially more than your original margin deposit.

**Commodity Pool.** In a commodity pool, you have purchased a share or interest in the pool, and it is the pool itself which must make the performance bond payments and margin calls described above. Your contractual obligations as a participant in the pool, including your liability for any losses to the pool, must be described in the pool's disclosure document.

**What is the role of the CFTC in protecting investors?**

The Commodity Futures Trading Commission, or CFTC, was created by Congress in 1974 to regulate commodity futures and option markets in the United States and, in particular, to protect market participants against manipulation, abusive trade practices, and fraud. The CFTC requires that all persons handling the public's commodity trading accounts and funds be registered with the CFTC. The

CFTC also requires that before any individual or firm with whom you intend to open an account provide you with a risk disclosure statement which provides certain information specified by the CFTC.

## **UNDERSTAND YOUR EXPOSURE TO RISK AND OTHER ASPECTS OF TRADING**

### **What is a risk disclosure document?**

Because trading in futures and options is appropriate only for certain businesses and individuals, the CFTC requires that a broker provide you with a document which describes the risks involved in entering into futures and option contracts. The document provides you with an opportunity to carefully consider whether futures and options are appropriate for you in light of your experience, objectives, financial resources and other circumstances. The broker must receive a signed and dated acknowledgment from you that you have received a disclosure document before he or she can accept any funds, securities, or property from you. Accounts opened through different types of commodity professionals require different types of risk disclosure documents.

**Futures Commission Merchants and Introducing Brokers.** A Futures Commission Merchant or Introducing Broker must provide you with a disclosure statement which informs you of the risks inherent in trading futures contracts and/or options on futures contracts, as well as the effect that leverage may have on potential losses or gains. The disclosure statement must also inform you that trading futures in foreign markets carries particular risks because of fluctuations in the currency exchange rate and differences in regulatory protection.

**Commodity Pools.** The disclosure document for a commodity pool must include more extensive information, including the following:

Principal risk factors

The extent of your potential liability

The percentage return necessary for you to break even

Fees and expenses

Material litigation during the last five years against the pool's operator, manager, trading advisors, principals, the pool's futures commission merchants and introducing brokers

Actual or potential conflicts of interest of the pool's operator, manager or advisors

Past performance information

Information about the trader or company and its principals

The business background of the pool's operator, manager, and advisors

The volatility of the market

Limits on your ability to withdraw funds

Management, advisory, and brokerage fees

Whether foreign futures and option transactions are involved

The investment program of the pool and use of proceeds

Whether those managing your money may trade for their own account

Information on any protection of your principal investment

Transferability and redemption

Liability of participants

Distribution of profits and taxation

When trading will begin

The ownership of the pool

Reporting to pool participants

Before a Commodity Trading Advisor can solicit you concerning the authority to direct or guide your trading, the Commodity Trading Advisor must provide you with a disclosure document containing similar information.

The specific CFTC regulations governing disclosure documents may be obtained by contacting the CFTC Office of Public Affairs.

### **How does risk affect my returns?**

Your returns may change radically at any time because futures and options are subject, by nature, to abrupt changes in price. Commodity prices are volatile because they respond to many unpredictable factors: weather, labor strikes, inflation, foreign exchange rates, government monetary policies, etc. And, in an individual account, because your position in futures and options is leveraged, even a small move against your position may result in a large loss, including the loss of your entire initial margin payment and liability for additional losses. The same risk of loss applies to a commodity pool, but your loss may be limited to the amount of your investment.

### **Are there strategies for reducing risk?**

In an individual account, there are certain types of orders (such as "stop-loss" orders, where permitted under local law, or "stop limit" orders) which are designed to limit losses to certain amounts. However, these orders may not be effective in limiting losses because market conditions may make it impossible to execute your orders at a reasonable price. Strategies using combinations of positions, such as "spread" and "straddle" positions, may be as risky as taking simple "long" or "short" positions. In a commodity pool, you should ask the pool about any strategies it employs to reduce risk. As always, be wary of claims of guaranteed profit and minimal risk.

### **Do options carry less risk than futures?**

Not necessarily. If you plan to trade through an individual account and are considering trading options on futures contracts, you should familiarize yourself with the types of options (puts or calls) which you contemplate trading and the risks associated with each. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs. You should also understand that certain market conditions (such as



lack of liquidity), market rules or the pricing relationships between the underlying interest and the option may increase risk.

### **Do the risks vary between puts and calls?**

The purchaser of an option (known as a "long" call or "long" a put) can do the following with an option position. The purchaser may "exercise" the options or allow the options to expire. The exercise of an option by someone who is "long" results either in a cash settlement or in the purchaser acquiring the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing "deep-out-of-the-money" options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk that the purchaser will exercise the option, obligating the seller to either settle the option in cash or to acquire and deliver the underlying interest. If the position is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk of loss may be reduced, but the loss may still exceed the premium received. If the option is not covered, the risk of loss can be unlimited.

### **How do commissions and fees affect my rate of return?**

Obviously, fees will reduce your rate of return and should, therefore, be examined carefully. In an individual account, the disclosure statement does specify fees and expenses. However, you are encouraged to consult your broker and be fully aware of the fees you will be charged. A commodity pool is required to provide you with a complete description of fees, commissions and other expenses. Before allocating any funds to a pool, you should pay particular attention to the "break-even analysis" and other required fee disclosures to determine how fees will affect your potential rate of return.

### **Is there a limit on potential losses?**

Before participating in a commodity pool, read the disclosure document closely for information on losses. Losses to commodity pool participants are ordinarily (but not always) limited to the amount of your participation. Sometimes in a commodity pool, in order to protect against catastrophic losses, a loss to the fund of more than a given percentage will trigger the sale of all open positions and will result in closing the pool account. The disclosure document must clearly state this possible course of action.

In an individual account, the leveraged nature of transactions can result in significant losses or gains, and losses may exceed your initial margin deposit. If so, you are responsible for covering those losses with additional funds.

### **How can I evaluate a broker's track record?**

If you plan to participate in a commodity pool, information on past performance must be included in the risk disclosure document required to be provided by a Commodity Pool Operator. Bear in mind that past performance is not a predictor of future results.

If you authorize a Commodity Trading Advisor to direct trading in your individual account, the Commodity Trading Advisor must provide you with a disclosure document including information on past performance. In reading the disclosure document, note whether the performance results are

based on actual trading results of client accounts. The Commodity Trading Advisor must disclose whether information is based on the Advisor's own proprietary (personal) account, or based on hypothetical or simulated results. If the information is based on hypothetical or simulated results, the Commodity Trading Advisor must disclose the inherent limitations of these results. No representation may be made that any account will or is likely to achieve profits or losses similar to those shown.

If you plan to open an individual account, and plan to ask your Futures Commission Merchant, Introducing Broker, or one of their Associated Persons for advice or have the firm or associated person trade on your behalf, get as much information as possible about the firm's or associated person's track record on behalf of other clients. While the firm or associated person is not required to provide this information, be wary of any firm or associated person who is not forthcoming or who provides you with incomplete information.

### **Can I withdraw my investment at any time?**

The funds needed to meet initial margin requirements in an individual account can only be withdrawn after trades are settled and, in some cases, after all open positions are closed. Accruals on futures contracts are paid out daily. Funds held in an individual account above and beyond the required margin or account opening requirements should be withdrawable. If you participate in a commodity pool, you may or may not be able to withdraw some or all of your money at any given time. Some pools have limitations on when funds can be withdrawn. You may only be able to redeem your funds on a monthly, quarterly, or even annual basis. Restrictions on the withdrawal of money should be evaluated by reading the disclosure document and asking questions before you invest in the pool.

### **What information should my broker give me once I open an account?**

In the case of an individually managed or personal account, you should receive confirmation by mail of all purchases and sales, and a month-end summary of transactions, showing gains, losses, and a mark-to-market valuation of your open positions and current account value. Your broker should also be willing and able to provide you with this information on a daily basis. In a commodity pool, your pool operator ordinarily should send you a monthly statement of net asset value. However, if commodity pool assets do not exceed \$500,000 at the beginning of the pool's fiscal year, reporting will be made quarterly.

### **Are my funds protected?**

In an individual account, funds that you have deposited with your commodity brokerage firm to trade on commodity exchanges located in the United States are required to be segregated (held separately) from any of the brokerage firm's own funds. The amount segregated will increase or diminish as you make or lose money from your trading. Also, even though your brokerage firm is required to segregate your funds, you may still not be able to recover the full amount of any funds in your account if the brokerage firm becomes insolvent and there are insufficient funds available to cover the obligations to all of its customers. Your account is not insured.

If, in your individual account, you trade on commodity markets located outside of the United States, your brokerage firm will set up a trading account for you which is in addition to the account

set up for your trading on U.S. markets. The funds in your foreign account will be segregated by your brokerage firm only while you maintain an open position on a foreign market, and then only to the extent of any margin required on that position, plus or minus any unrealized gain or loss on that position. You should ask your broker about account protection and should be aware of the limitations imposed on the protection of the funds in your commodity trading accounts.

A commodity pool operator is required to disclose what percentage of the pool's assets will be held in segregation.

## **RESOLVING DISPUTES AND ASKING QUESTIONS**

### **Where can I get help if I have a problem with my broker or account?**

If you have a dispute arising out of your commodity futures or option account, first try to resolve the problem with your broker and his or her supervisor at the firm which employs or guarantees the broker. If that fails, commodity futures customers have several options for resolving disputes: (1) the CFTC Reparations program; (2) industry sponsored arbitration; or (3) court litigation. In selecting a particular approach, you may want to consider the cost, length of time involved and whether or not the assistance of an attorney is required. More information on dispute resolution is available from the CFTC's Office of Proceedings (202-418-5250).

### **Who can I contact if I have questions?**

General information on the commodity futures markets and the CFTC is available through the World Wide Web. The CFTC's website is <http://www.cftc.gov>. You can also report suspected wrongdoing to the Commission's Division of Enforcement website (<http://www.cftc.enf.gov>). You may write or call the CFTC Office of Proceedings (202-418-5250) for information on filing complaints, or call the Office of Public Affairs (202-418-5080) for general information about CFTC. Call the main number of the CFTC (202-418-5000) if you are not sure which office may have the information you need. The National Futures Association also provides general information about futures and options as well as information on the registration status and disciplinary history of its members. Information on futures and option trading may also be available directly from commodity exchanges.

### **CFTC offices can be found in the following locations:**

Headquarters  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, D.C. 20581

Office of Proceedings: (202) 418-5250  
Office of Public Affairs: (202) 418-5080  
CFTC General Number: (202) 418-5000

Eastern Region  
140 Broadway  
19th Floor  
New York, NY 10005  
Phone: (646) 746-9700  
Alternate Phone: (917) 836-4226

Central Region  
525 West Monroe Street  
Suite 1100  
Chicago, IL 60661  
Phone: (312) 596-0700  
Fax: (312) 353-9126

Southwestern Region  
4900 Main Street - Suite 721

Kansas City, MO 64112  
Phone: (816) 931-7600  
Fax: (816) 931-9643

Minneapolis Office - Southwestern Region  
510 Grain Exchange Building  
Minneapolis, MN 55415  
Phone: (612) 370-3255  
Fax: (612) 370-3257

Western Region  
Murdock Plaza  
10900 Wilshire Boulevard - Suite 400  
Los Angeles, CA 90024  
Phone: (310) 443-4700  
Fax: (310) 443-4745 or (310) 235-6745

The following organizations are designated as self-regulatory organizations by the CFTC:

National Futures Association  
200 West Madison Street  
Chicago, IL 60606

Toll free: 1-800-621-3570  
In Illinois: 1-800-572-9400

Amex Commodities Corporation  
86 Trinity Place  
New York, New York 10006

(212) 306-1000

Chicago Board of Trade  
141 West Jackson Boulevard  
Chicago, Illinois 60604

(312)435-3500

Chicago Mercantile Exchange  
30 South Wacker Drive  
Chicago, Illinois 60606

(312) 930-1000

Coffee, Sugar & Cocoa Exchange, Inc.  
Four World Trade Center  
New York, New York 10048

(212) 742-6000

Commodity Exchange, Inc., Division of  
the New York Mercantile Exchange

Four World Trade Center  
New York, New York 10048

(212) 938-2900

Kansas City Board of Trade  
4800 Main Street, Suite 303  
Kansas City, Missouri 64112

(816) 753-7500

MidAmerica Commodity Exchange  
141 West Jackson Boulevard  
Chicago, Illinois 60604

(312) 435-3500

Minneapolis Grain Exchange  
400 South Fourth Street  
Minneapolis, Minnesota 55415

(612) 338-6212

New York Cotton Exchange & Affiliates:  
Financial Instrument Exchange, Citrus Associates  
of the New York Cotton Exchange, New York Futures Exchange

Four World Trade Center  
New York, New York 10048

(212) 742-5028

New York Mercantile Exchange  
Four World Trade Center  
New York, New York 10048

(212) 748-3250

Philadelphia Board of Trade  
Philadelphia Stock Exchange Building  
1900 Market Street  
Philadelphia, Pennsylvania 19103

(215) 496-5000

#### A "BEFORE-YOU-TRADE" CHECKLIST

Before you trade futures or options, have you:

Clearly identified your financial goals, including the amount of risk and loss you can sustain?

Determined how much assistance you want from a trading advisor in making trading decisions?

Checked the registration status and disciplinary history of the advisor or pool you select with the National Futures Association?

Received and thoroughly reviewed the disclosure document before you open an account?

Clearly understood the disclosure document, including the statement of fees, the potential for loss, your right to withdraw your funds and the "break-even analysis?"

Called the CFTC or the NFA with any questions you may have?

-- What You Should Know Before You Trade

Commodity Futures Trading Commission

Federal Regulatory Agency

For Futures Trading

Commodity Futures Trading Commission

Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
Phone: (202) 418-5000  
Fax: (202) 418-5525

Eastern Region  
140 Broadway  
19th Floor  
New York, NY 10005  
Phone: (646) 746-9700  
Alternate Phone: (917) 836-4226

Central Region  
525 West Monroe Street  
Suite 1100  
Chicago, IL 60661  
Phone: (312) 596-0700  
Fax: (312) 353-9126

Southwestern Region  
4900 Main Street - Suite 721  
Kansas City, MO 64112  
Phone: (816) 931-7600  
Fax: (816) 931-9643

Minneapolis Office - Southwestern Region  
510 Grain Exchange Building  
Minneapolis, MN 55415  
Phone: (612) 370-3255  
Fax: (612) 370-3257

Western Region  
Murdock Plaza  
10900 Wilshire Boulevard - Suite 400  
Los Angeles, CA 90024  
Phone: (310) 443-4700  
Fax: (310) 443-4745 or (310) 235-6745

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Updated May 16, 2001

## **EXHIBIT 3—Narrative and Pictorial Example of Embodiment of Applicants' Invention**

### **E-Markets NetContract**

#### **Overview of selected functionality**

The E-Markets NetContract tool allows for creation and management of contract transactions between parties. The tool is unique in several respects including:

- The ability of contractors to define varying contracting programs with a range of parameters (commodity/product type, delivery locations, delivery windows, unique terms and conditions, etc.). In the case of crop production contracts, contract programs can be associated with designated sets of seeds types.
- The ability of contractors to ration or allocate allotments of contracted units (e.g., bushels, tons, acres, etc.). Allocations can be assigned by contracting program, by delivery location, and by delivery time frame (i.e., delivery window) and by customer group or geography.
- The ability of contractor to make real-time adjustments to contract program allocations in order to accommodate shifts in supply and demand conditions in the market.
- The ability for users to reserve contracted units for a specified period of time (as determined by the contractor) by selecting desired number of contracting units from pool of real-time availability.
- The ability to manage contracts at varying stages of completion (e.g., pending contracts, signed contracted, on-file contracts).
- The ability of contractors to monitor real-time status of all contracts at varying stages.
- The ability of a network of users to access and utilize the NetContract tool. Data and functionality availability is based upon the user's company affiliation and business role.

This system is not a bid/offer system. The system does not facilitate an immediate obligation with the click of a button. All contracts are mutually approved and go through the stages of Program offering, Intention to participate, Choice of alternatives offered, Product order intentions, Supplier choice, Participation reservation (optional by contract), Acceptance by participant and final Acceptance by the contractor. A contract is an obligation between two parties and there are multiple stages a contract goes through. This system manages those stages and does so in a centralized fashion with the appropriate Security to allow only the right person to access, change or confirm the individual data. The previous systems were paper documents where no one knew what stage the contract was in and it resulted in major over commitments or under utilization of programs.

Two of the key functions of the NetContract tool are to create new contract transactions and modify existing contract transactions. Below we will first describe some of the key process steps involved in creating a new contract transaction. The example used is for a Non-GMO white corn contracting Choice of alternatives offered program where the contracting is contracting for acres of production.



## Create new contract transaction

### Select commodity

- Contract programs can be defined for an unlimited range of commodities or product types. In the screen shown below, contract programs have been defined for corn, soybeans, and white corn. For this example, we will select the corn commodity type.

The screenshot shows the 'AgContract Information Management Tool' interface. At the top, there is a navigation bar with links: 'Contracts', 'View Reports', 'Admin Tools', 'Tutorial', 'Email', and 'Logout'. The main content area is titled 'Make New Contract'. It contains three sections: 1. 'Select a commodity:' with a dropdown menu showing 'Corn', 'Soybeans', and 'White Corn', and a 'Next' button below it. 2. 'Manage Contract - Select' with a list of contract programs: '2000006 - Daniel Kelley, Normal IL', '2000013 - Ron Fitchhorn, McLean IL', '2000015 - J. Gordon Bidner, Carlock IL', '2000026 - Dale Schardt, Carleton NE', and '2000027 - Randy Meyer, Ruskin NE'. A 'Next' button is below this list. 3. 'Manage Contract - Enter' with a text input field labeled 'Enter a contract:' and a 'Next' button below it. The footer of the interface says 'Powered by EMarkets™'.

### Select contract program

- One or more contract programs are defined for each commodity. In this example, two programs are defined, and we will select the Non-GMO corn program.
- For crop production contracts, contractors who sponsor and define programs include grain elevators, processors, food companies, and independent contract organizations.
- Contract programs are defined by a program name, contract type (e.g., buyers call, harvest delivery), contracting units (e.g., acres, bushels, tons), delivery locations, delivery windows, etc.

The screenshot shows the 'AgContract Information Management Tool' interface. At the top, there is a navigation bar with links: 'Contracts', 'View Reports', 'Admin Tools', 'Tutorial', 'Email', and 'Logout'. The main content area is titled 'Contract Types'. It contains a section 'Select a contract type' with a text input field showing '2003 NON-GMO FOOD GRADE WHITE CORN - Buyers Call - Acres - Corn' and 'Nutri Corn - Buyers Call - Acres - Corn'. Below the input field are 'Next' and 'Cancel' buttons. The footer of the interface says 'Powered by EMarkets™'.

## Select grower

- For crop production contract programs, a grower represents one of the parties to the contract. The NetContract database contains the set of growers who are eligible to be a party to a contract. New growers can also be added to the database.
- The user creating a new contract will select a grower from the database.

The screenshot shows the 'AgContract® Information Management Tool' interface. At the top, there is a navigation bar with links: 'Contracts', 'View Reports', 'Admin Tools', 'Tutorial', 'Emenu', and 'Logout'. Below this, the 'Grower Account Information' section is active. It prompts the user to 'Select an account' and displays a table of available accounts. The table has three columns: 'Account Name -- Customer Id (if applicable) -- Address'. The accounts listed are:

Account Name -- Customer Id (if applicable) -- Address	
Krog, Russell - 0000428102466505 - 3	BLE GROVE, IA, 50533
Krog, Sam - 0000427262568200 - RT	WOOD, MN, 56586
Krog, Scott - 0000428307199504 - RT	
Krog, Warrenrichard - 0000428502152	T RD, CENTRAL CITY, IA, 52214
Kroger, Jim - T370715 - Rt2, Lyons, I	
Kroger, Steve - 0000428103873800 -	le, IA, 52040
Kroger, W. - 0000427157508904 - 125	Lyons, NE, 68038
Kroger, Willis - T366948 - 1250 Co. R	0385001
Kroger, Alan - 0000428552203503 - 48	N, SD, 57013
Kroger, Mark - 900028583 - 28588 S H	7013

Below the table are four buttons: 'Select Account', 'Search Again', 'Create Account', and 'Cancel'. At the bottom right, it says 'Powered by E-Markets™'.

## Select delivery location

- Each contract program has one or more associated delivery locations. When creating a contract for the specific grower, the user selects the desired delivery location.

The screenshot shows the 'AgContract® Information Management Tool' interface. At the top, there is a navigation bar with links: 'Contracts', 'View Reports', 'Admin Tools', 'Tutorial', 'Emenu', and 'Logout'. Below this, the 'Company Information' section is active. It prompts the user to 'Select company:' and displays a list of companies:

ABC Company - Atlantic - 54464 Olive Street Atlantic IA
ABC Company - Denison - Highway 30 West Denison IA
ABC Company - Manilla - 256 Main St Manilla IA

Below the list are two buttons: 'Next' and 'Cancel'. At the bottom right, it says 'Powered by E-Markets™'.

## Enter desired contracting units

- Contractors can allocate a specified number of contracting units (i.e., acres in our example here) for each delivery location and for each defined delivery period.
- Real-time, contracting unit availability is shown for each delivery period. Availability adjusts dynamically as contracts are created and/or as allocation adjustments are made by contractors. This approach ensures that units contacted do not exceed the levels desired by the contractors.
- As demand and supply conditions dictate, the contractors can at any time make adjustments to the allocated units (e.g., acres) as long as they remain greater than the obligated amounts.

Window Name	Delivery Window	Available Acres	Selected Acres
Dec	December 1st, 2003 to December 31st, 2003	2280	<input type="text"/>
Jan	January 1st, 2004 to January 31st, 2004	2400	<input type="text"/>
Feb	February 1st, 2004 to February 28th, 2004	2400	<input type="text"/>
Mar	March 1st, 2004 to March 31st, 2004	2315	<input type="text"/>

Powered by EMarketsSM

## Enter desired ingredient quantity

- Some production contracts may require that the desired quantity of Inputs be entered. Each contracting program can be defined with a qualifying set of input ingredients to choose from. (For example, seed needed for a production contract)
- The user will be prompted to select the specific brand, type and the number of units of the ingredient needed to carry out the contract being created.

## Contract Finale

There are 3 phases a contract can go through. Pending, Signed and Final. The Contractor can choose, if they want, to set up an accepted time limit for a contract to stay in a Pending phase. This allows contractors to take intended orders before a final decision is made and it allows customers to reserve a place in priority before making a decision.

- Once all of the contract parameters have been selected, a contract summary can be reviewed by the user.

- At this point in the process, the user can (1) change any parameters that need adjusting, (2) display and print the contract, or (3) cancel the contract just created.
- Each new contract created is given a “pending phase.” That is, the contract is pending final acceptance by both parties – in this example by the contractor and the grower. Once signed, by the grower the activity in the system then converts the contract to a “signed phase.”
- After the contract converts to Signed status the Contractor needs to confirm acceptance of the contract and does so by launching the On file button and walking through the process to acknowledge acceptance of the Contract. At this point the contract is mutually accepted and valid.
- The system maintains the phase of the contract in the system and the data already input even when the user does not have an active session open. To eliminate the data and the phase the user must clearly disable the contract.

**AgContract®**  
Information Management Tool

Contracts | View Reports | Admin Tools | Tutorial | EMenu | Logout

**Contracting Summary**

☐ cannot be modified. 
 ☒ entered and can be modified. 
 ☐ not entered but can be modified

Contract Number: 2003020

Phase: Pending

Commodity: Corn

Program: NON-GMO FOOD GRADE WHITE CORN

Originator: Dave Krog, E-Markets Inc., Ames, IA, (515)233-8720

Account: Krog, Russell -- 0000428102466505 - EAGLE GROVE, IA (429)496-7295

Company: ABC Company- Denison, Denison, IA, (712)263-5665

	Name Delivery Window	Acres
Contract Information:	Dec December 1st, 2003 to December 31st, 2003	120
	Feb February 1st, 2004 to February 28th, 2004	80

Pending Date: August 01, 2003 13:54

Signed Date:

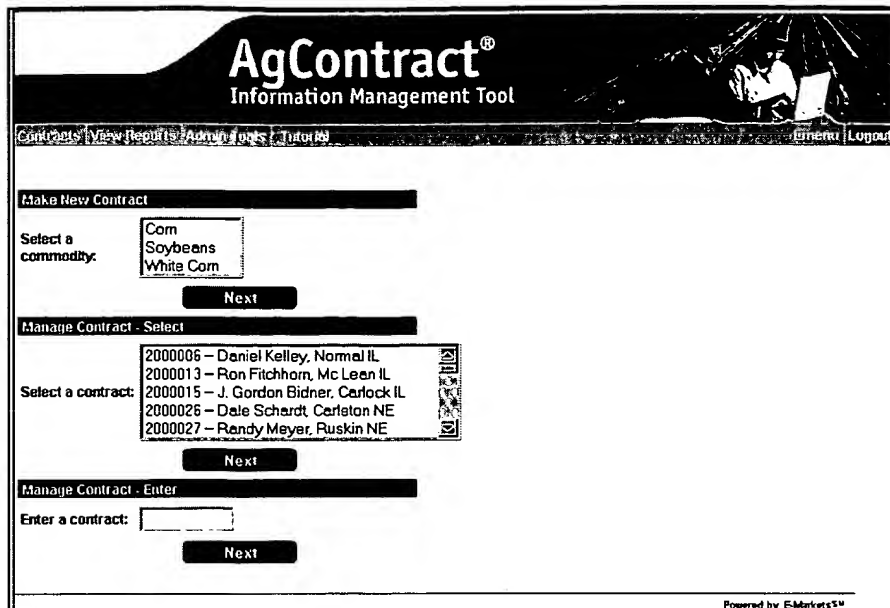
Onfile Date:

Powered by EMarkets5™

Otherwise the contract can stay in the pending state until the clearing time limit takes place.

## Manage Existing contract transactions

- Users with the appropriate level of security can retrieve manage (i.e., add and/or change parameter values) existing contracts. The user's level of security determines what sort of contract changes can be made.
- To manage a contract, the user selects from a set of contracts that they are allowed to view and manage.
- When the user selects a contract to manage, the contract summary page is displayed with information from the selected contract.



**AgContract®**  
Information Management Tool

Contracts | View Reports | Admin Tools | Tutorial | EMenu | Logout

**Make New Contract**

Select a commodity:

**Manage Contract - Select**

Select a contract:

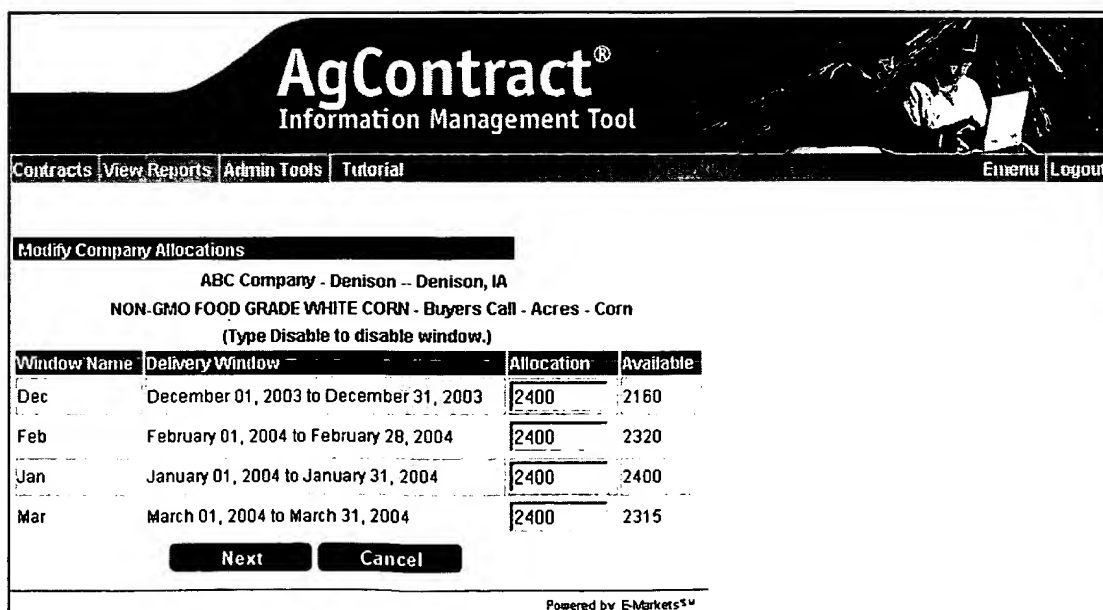
**Manage Contract - Enter**

Enter a contract:

Powered by E-Markets™

## Manage program allocations

- Contractor users with the appropriate levels of security can manage contracting unit allocations. That is, they can adjust allocations up and down as needed as long as the allocation is great enough to cover the obligations.
- Changes in allocations are immediately reflected in contracting unit availability.



**AgContract®**  
Information Management Tool

Contracts | View Reports | Admin Tools | Tutorial | EMenu | Logout

**Modify Company Allocations**

ABC Company - Denison -- Denison, IA  
 NON-GMO FOOD GRADE WHITE CORN - Buyers Call - Acres - Corn  
 (Type Disable to disable window.)

Window Name	Delivery Window	Allocation	Available
Dec	December 01, 2003 to December 31, 2003	2400	2160
Feb	February 01, 2004 to February 28, 2004	2400	2320
Jan	January 01, 2004 to January 31, 2004	2400	2400
Mar	March 01, 2004 to March 31, 2004	2400	2315

Powered by E-Markets™